IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/04/2004

CORAM

THE HONOURABLE MR. JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR. JUSTICE T.V.MASILAMANI

Appeal Suit No.1450 of 1988

The Commissioner
H.R & C.E. (Admn.) Department
Nungambakkam
Madras-34. .. Appellant

-Vs-

1. Senthamarai Kannan (died)
2. Jayaraman,
Village Munsif and Fit Person
Samudram Village,
Sankari Taluk.
3. Senbhagham
4. Kamalam
5. Saroja Alia Baby
6. Muthulakshmi
7. N.Sakunthala
8. R.Radha
9. V.Jayalakshmi
10.V.Geetha .. Respondents
(Respondents 3 to 10 are
legal representatives of
1st respondent - impleaded
by order dt.5.4.2004 in
C.M.P.No.10577 of 2001)

PRAYER: Against the judgment and decree of the learned II Additional Subordinate Judge, Salem dated 4.3.1982 in O.S.No.86 of 1979.

!For Appellant : Mr.G.Sukumaran
Spl. Government Pleader

^For Respondents: No appearance
for second respondent
Ms.S.Selvakumari
for respondents 3 to 9

:JUDGMENT

(The Judgment of this Court was delivered by P.D.DINAKARAN,J.)

The appeal is directed against the judgment and decree dated 4.3.198 2 of the learned II Additional Subordinate Judge, Salem made in O.S.No.86 of 1979 laid by the plaintiff/first respondent herein to set aside the order of the Commissioner, Hindu Religious and Charitable Endowments Department/appellant herein dated 23.3.1978 made in A.P.No.63 of 1977 confirming the order of the Deputy Commissioner, Hindu Religious and Charitable Endowments Department dated 21.1.1977 made in O.A.No.86 of 1974.

2.1. In nutshell, the plaintiff/first respondent herein raised a dispute before the Deputy Commissioner Hindu Religious and Charitable Endowments Department in O.A.No.86 of 1974 under Section 63(b) of the

Tamilnadu Hindu Religious and Charitable Endowments Act, 1959 (for brevity "the Act") claiming that he is a hereditary trustee of the Sri Lakshminarayana temple situated at Samudram Village, Sankari Taluk.

2.2. According to the plaintiff/first respondent herein, the said temple is an ancient public one, to which the properties have been endowed as devadayam for its upkeeping and maintenance by the ancient kings. The endowment was confirmed in the name of the deity in the Inam register. One Swami Iyengar was the last Archakar-cum-trustee. As he had no issues, the said Swami Iyengar adopted the plaintiff/first respondent herein as an adopted son and thus the plaintiff/first respondent held both the office of the hereditary trustee as well as the Hereditary Archakar.

2.3. The temple being a small public temple, its affairs were managed with the meagre income of the temple properties as well as the offerings by the plaintiff/ first respondent and their predecessors-ininterest and accordingly, the plaintiff/first respondent herein claimed that he is a hereditary trustee of the said temple.

2.4. However, both the Deputy Commissioner/Original Authority who exercised the power conferred under Section 63(b) of the Act, vide order dated 21.1.1977 made in O.A.No.86 of 1974, as well as the Commissioner/Appellate Authority (appellant herein), vide order dated 23.3.19 78 made in A.P.No.63 of 1977 rejected the plea of the plaintiff/ first respondent herein and refused to accept that the plaintiff/first respondent herein is a hereditary trustee, disputing the adoption of the plaintiff/first respondent herein by Swami Iyengar and also denying the genealogical table. Hence, the above suit.

2.5. Before the learned II Additional Subordinate Judge, Salem, the following issues were framed and tried, viz.,
(i) Is the plaintiff the hereditary trustee of Sri Lakshminarayana Temple at Samduram Village, Sankari Taluk? and
(ii) Is the order of the Deputy Commissioner, H.R. and C.E., Coimbatore passed in O.S.86 of 1974 and later on confirmed by the Commissioner, H.R. And C.E., Madras in A.P.No.63 of 1977 liable to be set aside?

2.6.1. Substantiating the above issues, the plaintiff/first respondent herein marked 29 documents (Exs.A1 to A29).

2.6.2. The order of the first defendant/appellant herein dated 23.3.1978 made in A.P.No.63 of 1977 was marked as Ex.A1.

2.6.3. Exs.A7 (Certified copy of plaint in O.S.No.824 of 1956 on the file of the learned District Munsif, Salem dated 3.8.1986), Ex.A9 (Certified copy of the extract of the Settlement Register issued by the Deputy Collector, Salem to the plaintiff/first respondent herein), and Ex.A15 (Certified copy of the judgment dated 22.8.1975 made in O.S.No.436 of 1974 on the file of the Additional District Munsif, Salem), were marked to prove that the plaintiff/ first respondent herein was continuously acting as a trustee and managing the properties of the temple.

2.6.4. That apart, the plaintiff/first respondent herein also marked Exs.A11 and A12 (Kist receipt book issued for the suit temple), Exs.A13 and A14 (Extracts from the tenancy registry of the suit land), Ex.A19 (Patta book in favour of the deity), Exs.A21 to A26 (receipts for the payment of contribution issued to the suit temple), and Exs.A27 and A29 (kist receipt issued in favour of the temple), to show that the properties of the temple were managed by the plaintiff/first respondent herein.

2.7. Even though the trial Court found that the plaintiff/first respondent herein failed to prove the adoption by Swamy Iyengar, against which finding the plaintiff/first respondent herein has not preferred any appeal, after satisfying with the other documentary and oral evidence, it held that the plaintiff/first respondent herein and his predecessors-in-interest were hereditary archakars-cum-trustees of the temple from time immemorial.

2.8. Aggrieved by decree and judgment dated 4.3.1982 made in O.S. No.86 of 1979, the first defendant/appellant herein, preferred the above appeal.

3. The core contention of Mr.G.Sukumaran, learned Special Government Pleader appearing for the appellant is that when the case of the plaintiff/first respondent herein claiming the office of the hereditary trustee as an adopted son of Swamy Iyengar, the last holder of the office of the hereditary trustee was disbelieved by the Court below, the Court below ought not to have decreed the suit as prayed for.

4. Per contra, Ms.S.Selvakumari, learned counsel appearing for the respondents 3 to 10 reiterated the submissions made on behalf of the plaintiff/first respondent herein before the Court below that weighed the learned II Additional Subordinate Judge, Salem.

5. We have given careful consideration to the submissions of both sides.

6. A reference to Section 6(11) of the Act, which defines '

hereditary trustee' is apposite:
Section:6 - Definitions:
(1) to (10) ...
(11) "hereditary trustee" means the trustee of a religious institution, the succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder, so long as such scheme of succession is in force.

7. As per the above definition, hereditary trustee of a religious institution would be by the succession to whose office devolves by hereditary right; or is regulated by usage; or is specifically provided for by the founder. Therefore, suffice it for the persons who claim hereditary trusteeship to prove any one of the said provisions.

8. Merely because a person failed to prove his adoption and thereby he failed to prove his succession to the office by hereditary right does not mean that he cannot sustain his claim for hereditary trusteeship by way of usage or as provided by the founder, because the term "hereditary trustee" has got a wider connotation which has to be decided on the basis of the nature of the office and the management of temple properties.

9. When the plaintiff/first respondent herein had chosen to prove that the plaintiff/first respondent herein and his predecessors-ininterest were not only holding the office of the hereditary archakars, but also that of the hereditary trustees, substantiating his claim based on the exhibits referred to above, both with respect to his right to manage the properties of the temple as well as to conduct the poojas as a poojari, as deposed by P.W.1, the first defendant/appellant failed to rebut the same either by oral or documentary evidence as rightly found by the learned II Additional Subordinate Judge, Salem.

10. Furthermore, the efforts taken by the plaintiff/ first respondent herein in protecting the interest of the temple to save its properties against the lessees and the tenants in O.S.No.824 of 1956 (Certified copy of plaint in O.S.No.824/1956 on the file of the District Munsif of Salem was marked as Ex.A7) and O.S.No.436 of 1974 (Certified copy of judgment in O.S.No.436/1974 on the file of the Additional District Munsif of Salem was marked as Ex.A15), substantiate the case of the plaintiff/ first respondent herein that he was incharge of the properties and managing the properties of the temple.

11. Similarly, Exs.A11 and A12 (Kist receipt book issued for the suit temple); Exs.A13 and A14 (Extract from the tenancy registry of the suit land); and Ex.A19 (Patta book issued in favour of the deity) further prove the possession, enjoyment and control of the properties of the temple by the plaintiff/first respondent herein; Exs.A21 to 24 (receipts for the payment of contribution issued to the suit temple) further substantiate the involvement of the plaintiff/first respondent herein in managing the properties of the temple.

12. It is under such circumstances, after due appreciation of the facts and circumstances of the case, in the light of the oral and documentary

evidence referred to above, the learned II Additional Subordinate Judge, Salem had come to the conclusion that the plaintiff/first respondent and his predecessors-in-interest were not only hereditary Archakars but also hereditary trustees of the temple from time immemorial and they were in possession of the properties of the temple and managing the same.

13.1. In BABU GURUKKAL v. COMMR. FOR H.R. & C.E. BOARD, 1964 (I) MLJ 384, K.VEERASWAMI,J, as he then was, held as under:
"Small temples in South India often have only poojaris who by long custom or usage look after the affairs of the temples where they serve as gurukkals; they function in a dual capacity, namely poojari cum trustee. Such a combination of offices is not necessarily opposed to public policy or contrary to law. In the case of such small temples, there is a presumption that the poojari himself is the hereditary trustee and there is nothing illegal in the hereditary trusteeship and poojariship being combined in the same person in such small temples. When the documentary evidence including the Inam Register shows that for more than three generations the poojariship cum trusteeship in a temple was in the same family and descended fr om father to son and there is no evidence to show that this was not so or could not be so, the presumption is all the greater, and it must be held that the members of the family are hereditary trustees of the temple."

13.2. Again in RANGANATHA PILLAI v. THE COMMR. H.R.& C.E., 1979 (I) MLJ 24 Short Notes, MOHAN,J., as he then was, held that:
"The definition of a hereditary trustee in Section 6(11) of the Tamil Nadu Religious and Charitable Endowments Act is very wide in its amplitude. Hereditary trustee is not to be understood as from father to son or from son to his son. Having regard to the comprehension definition, it is enough if a usage is established for a long number of years evidencing exercise of hereditary trusteeship of a particular temple or temples by members of a family."

13.3. In MUTHUSWAMY v. AIYASWAMI, 1964 (II) MLJ 560, a Division Bench of this Court, referring to the earlier decisions of this Court in (i) Ramaswami v. Ramaswami, (1892) 2 MLJ 251; and (ii) Andavar v. Periathambi Padayachi, (1951) 2 MLJ 232, held as follows:
"There is nothing illegal in hereditary trusteeship and pujariship being combined in the same person, especially in the case of small temples where there has been no interference or control by any of the villagers of the place. In the case of small village temples, where the temple property is of insignificant value and the income is hardly sufficient even to meet the routine expenses of the temple, if the archaka or the poojari is left in management of the temple lands and the affairs of the temple without any interference by any of the villagers for a long number of years, it has to be presumed that with the consent and acquiescence of the worshippers of the village the pujari is the trustee as well. In such a case it must be held that the poojari managing the lands and affairs has made out his right to hereditary trusteeship and the interests of the temple are not likely to suffer, when the person concerned admits that the lands, are temple lands and has never set up any rights to them as his own property."

13.4. In VENKATARAMAN V. L.A.THANGAPPA, AIR 1972 Madras 119, V. RAMASWAMI,J., as he then was, held that in the case of small temples with meager income, there is nothing illegal in the hereditary poojariship and trusteeship being vested in the same individual.

14. Applying the ratio laid down in:
(I) BABU GURUKKAL v. COMMR. FOR H.R. & C.E. BOARD, 1964 (I) MLJ 384;
(II) RANGANATHA PILLAI v. THE COMMR. H.R.& C.E., 1979 (I) MLJ 24 Short Notes;
(III) MUTHUSWAMY v. AIYASWAMI, 1964 (II) MLJ 560;
(IV) VENKATARAMAN V. L.A.THANGAPPA, AIR 1972 Madras 119; and
(V) THE COMMR. H.R.& C.E. V. Vaithinatha Gurukkal and others, 1974 (II) MLJ 406,

and taking note of the fact that the suit temple is, concededly, a small temple and the affairs of the same are managed by the contributions made by the public and the office of the poojariship and trusteeship was carried on by one and the same person, we do not see any reason to interfere with the conclusion that the plaintiff/first respondent herein is the hereditary trustee-cum-archakar of the suit temple within the definition of Section 6(11) of the Act.

15. For the aforesaid reasons, finding no ground to interfere with the decree and judgment dated 4.3.1982 in O.S.No.86 of 1979 of the learned II Additional Subordinate Judge, Salem, this appeal is dismissed with costs. Counsel fee Rs.1000/-.

Index :Yes
Internet:Yes

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To:
1. The II Additional Subordinate Judge
Salem.

2. The Commissioner
H.R & C.E. (Admn.) Department
Nungambakkam
Madras-34.

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